

Exhibit 2

Shiloh S. Hernandez
Melissa A. Hornbein
Western Environmental Law Center
103 Reeder's Alley
Helena, Montana 59601
(406) 204-4861
hernandez@westernlaw.org
hornbein@westernlaw.org

Attorneys for Plaintiffs

Nathaniel Shoaff (*pro hac vice*)
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
(415) 977-5610
nathaniel.shoaff@sierraclub.org

Attorney for Plaintiff Sierra Club

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

MONTANA ENVIRONMENTAL
INFORMATION CENTER, *et al.*,

Plaintiffs,

vs.

DAVID BERNHARDT *et al.*,

Defendants.

Case No. 1:19-cv-00130-SPW-TJC

**SECOND DECLARATION OF
DERF JOHNSON**

I, Derf Johnson, hereby declare:

1. MEIC and our members are very concerned about, and harmed by, the mining activity occurring in Area F. Following the release of the Area F permit, in the spring of 2020 I traveled to the Rosebud Mine, and specifically Area F, in order to investigate what activities that WRM was conducting within the Area F expansion. Since OSM approved the Area F Mining Plan in 2019, I have also coordinated with our members on multiple occasions to visit Area F to investigate potential mine expansion activities.

2. Following the filing of our complaint, our legal counsel asked counsel for Westmoreland Rosebud Mining, LLC to establish an expedited briefing schedule to avoid environmental damage before merits briefing and to avoid having to seek an injunction. Unfortunately, WRM rejected this proposal. Furthermore, WRM refused to abstain from mining in Area F pending resolution of the case. WRM even refused to tell us when mining in Area F was planned.

3. Neither OSM nor WRM notified MEIC about when mining was going to start at Area F. I heard about mining activities second-hand from a community member and supporter in Colstrip (many of our supporters in Colstrip are afraid to show their support publicly for fear of retribution). As a result, I immediately drove to Colstrip to verify that this activity was actually taking place.

4. After discovering the prep work earlier this year, I immediately began working with MEIC's legal counsel to diligently prepare our injunction brief. This

effort was unfortunately hampered by the profound disruptions to the work and lives of all members and employees of the five plaintiff organizations due to the COVID-19 epidemic.

5. Following Westmoreland Coal Co.'s bankruptcy in 2018, the company's assets at the Rosebud Mine were acquired by a group of hedge and investment funds mostly from the New York City area and Chicago (see exhibit 1 attached hereto). It is my understanding that these entities are creditors or had a financial relationship with Westmoreland and are attempting to reap the last bit of financial benefit possible out of the remainder of the Rosebud Mine in order to recoup investments.

6. In recent years, the Rosebud Mine has produced approximately 8 million tons annually and has exclusively supplied coal to the Colstrip plant, which in turn only receives coal from the Rosebud Mine. Earlier this year, Units 1-2 of Colstrip permanently retired, dramatically reducing the need for coal from the Rosebud Mine. Westmoreland's 2018 10-k form stated that Units 3 and 4 consumed "approximately 6.2 million tons per year" of coal. Additionally, due to the increasing costs of running Colstrip, and more affordable and flexible market alternatives, in recent years the amount of time that the Colstrip Power Plant runs (called the capacity factor) has steadily declined, further reducing the need for coal from the strip-mine. Recent filings in utility proceedings in Washington and

Montana show that the capacity factor of Units 3 and 4 is likely to continue to decline. As a result, it is likely that the demand for coal from the Rosebud Mine will be significantly less than 6 million tons per year for the next five years.

7. In 2019 WRM negotiated two new five-year coal supply contracts with the utility owners of Colstrip. One contract was with the regulated utilities of Colstrip, and one was with the merchant utility, Talen. A partially redacted copy of the contract with regulated utilities was made public. It shows that WRM will derive substantial benefit from a significant increase in the price of coal. Furthermore, it is highly unlikely that WRM would have negotiated a contract that would make mining its existing permitted coal unprofitable, especially given the risks associated with opening a new section of the mine.

8. MEIC and our partner organizations have long lobbied for and invested considerable resources and time in assuring a just transition from coal to clean energy for the communities and workers of Colstrip and Lame Deer. To date, MEIC and our allies have secured \$13 million in community transition funding from Washington utility owners. MEIC is also currently advocating for the other Colstrip owners, including NorthWestern Energy, to make similar commitments towards community transition. MEIC is also working to establish ongoing, permanent economic development in the region by advocating for the installation of renewable energy infrastructure that would take the place of Colstrip.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 9, 2020.

A handwritten signature in black ink, appearing to read "Derf Johnson", written in a cursive style.

Derf Johnson

Exhibit A

Name	Address	Nature and Amount ³ of Disclosable Economic Interests		
		First Lien Notes	First Lien Term Loan	Bridge/DIP Loan ⁴
Aviva Investors	225 West Wacker Drive Suite 2250 Chicago, IL 60606	\$32,495,000.00	N/A	N/A
Barclays Bank PLC (“ <u>Barclays</u> ”), solely in respect of its Distressed Trading Desk and not any other unit, group, division or affiliate of Barclays	745 Seventh Avenue New York, NY 10019	\$3,580,000.00	\$455,206.00	\$1,381,068.03
Cross Sound Management, LLC , as investment advisor for certain funds and accounts	10 Westport Road Building C, Suite 202 Wilton, CT 06897	\$12,473,000.00	\$43,041,702.00	\$5,965,247.16
J.H. Lane Partners Master Fund, LP	126 East 56th Street Suite 1620 New York, NY 10022	N/A	\$5,475,644.34	\$1,766,060.46
Marathon Asset Management, LP , as investment advisor for certain funds and accounts	One Bryant Park 38th Floor New York, NY 10046	N/A	\$7,472,755.00	N/A
MSD Partners, LP	645 Fifth Avenue 21st Floor New York, NY 10022-5910	\$20,589,000.00	N/A	\$2,849,905.66

³ Amounts listed on this Exhibit A are calculated as of November 8, 2018 and do not include any claims for, without limitation, fees, expenses, accrued and unpaid interest, premiums, make-wholes or indemnification that may be owing under any indenture, credit agreement or other instrument, including the RSA.

⁴ The proposed Final DIP Order seeks approval for the Bridge Loan Obligations to be “rolled” into the DIP Loan Obligations.

Name	Address	Nature and Amount ³ of Disclosable Economic Interests		
		First Lien Notes	First Lien Term Loan	Bridge/DIP Loan ⁴
Oaktree Capital Management, L.P. , investment manager of the relevant holder or its fund owner(s)	1301 6th Ave 34 th Floor New York, NY 10019	\$10,700,000.00	\$19,272,281.00	\$5,005,166.61
Pascal Fund, Ltd.	MUFG House, 227 Elgin Avenue - PO Box 852, Grand Cayman, KY1-1103 - Cayman Islands	\$4,000,000.00	N/A	N/A
Renato Frischmann Bromfman	Chemin Des Bougeries 31 1231 Conches, Switzerland	\$1,000,000.00	N/A	N/A
Pacific Investment Management Company LLC (“PIMCO”), as investment manager or adviser of certain funds and/or accounts ⁵	1633 Broadway New York, NY 10019	\$97,500,000.00	\$37,884,114.00	\$22,608,224.16
Redwood Capital Management, LLC (on behalf of certain funds and accounts)	910 Sylvan Avenue Englewood Cliffs, NJ 07632	N/A	N/A	\$1,507,762.98
Serengeti Asset Management, LP , as investment advisor	632 Broadway 12th Floor New York, NY 10012	\$3,259,000.00	\$24,858,436.00	N/A
Stonehill Institutional Partners, L.P.	c/o Stonehill Capital 885 Third Avenue 30th Floor New York, NY 10022	\$54,610,000.00	\$57,194,976.27	\$18,587,171.35

⁵ Affiliates (including subsidiaries) of the PIMCO members (the “PIMCO Affiliates”) of the WLB Ad Hoc Group own various economic interests in the MLP Debtors, which interests shall be disclosed in the *Verified Statement of Schulte Roth & Zabel LLP Pursuant to Bankruptcy Rule 2019*. The PIMCO Affiliates are not members of the WLB Ad Hoc Group and are not represented by Counsel.

Name	Address	Nature and Amount ³ of Disclosable Economic Interests		
		First Lien Notes	First Lien Term Loan	Bridge/DIP Loan ⁴
Stonehill Master Fund Ltd.	c/o Stonehill Capital 885 Third Avenue 30th Floor New York, NY 10022	\$28,174,000.00	\$49,648,046.89	\$12,950,829.51
Ivy Investment Management Company , as investment advisor for certain funds and accounts	6300 Lamar Avenue Overland Park, KS 66202	N/A	\$36,201,540.25	\$6,081,557.74
Wolverine Flagship Fund Trading Limited (may be held in one or more wholly-owned subsidiaries)	c/o Wolverine Asset Management 175 W. Jackson Blvd. Suite 340 Chicago, IL 60604	\$11,400,000.00	N/A	\$1,903,722.29
York Capital Management Global Advisors, LLC , on behalf of certain funds managed or advised by it or its affiliates	767 Fifth Avenue 17th Floor New York, NY 10153	N/A	N/A	\$1,047,715.23
ZAIS Group , as investment advisor for certain funds and accounts	101 Crawfords Corner Road Suite 1206 Holmdel, NJ 07733	\$5,850,000.00	\$13,093,239.99	\$3,163,391.94